



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2018-0035; FRL-9996-18-Region 5]

**Revision of Sheboygan County, Wisconsin Nonattainment
Designation for the 1997 and 2008 Ozone Standards and Clean Data
Determination for the 2008 Ozone Standards**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a request from Wisconsin to revise the designation for the Sheboygan nonattainment area for the 1997 primary and secondary ozone National Ambient Air Quality Standards (NAAQS) and the 2008 primary and secondary ozone NAAQS, by splitting the existing area into two distinct nonattainment areas that together cover the identical geographic area of the existing nonattainment area. This revised designation is supported by air quality data, emissions and emissions-related data, meteorology, geography/topography, and jurisdictional boundaries. Both areas will retain their nonattainment designation and Moderate classification. In this action, EPA is also making a clean data determination for one of the two separate areas for the 2008 ozone NAAQS.

DATES: This final rule is effective on **[insert date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2018-0035. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353-4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, svingen.eric@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the Background for This Final Rule?

II. What Comments did EPA Receive?

III. What Actions is EPA Taking?

IV. Statutory and Executive Order Reviews.

I. What is the Background for This Final Rule?

On July 18, 1997, EPA revised the former 1-hour ozone primary and secondary standards and replaced them with 8-hour standards at a level of 0.08 parts per million (ppm) (40 CFR 50.10). On March 27, 2008, EPA further revised the 8-hour ozone NAAQS by lowering the level of the primary and secondary standards from 0.08 ppm to 0.075 ppm (40 CFR 50.15).

On April 30, 2004 (69 FR 23858), and May 21, 2012 (77 FR 30088), EPA designated the entirety of Sheboygan County in Wisconsin as nonattainment for the 1997 ozone NAAQS and 2008 ozone NAAQS, respectively.

On March 1, 2011, EPA determined that the Sheboygan nonattainment area had attained the 1997 ozone NAAQS (76 FR 11080). Since that determination, the area has continued to attain the 1997 ozone NAAQS, and the area retains its Moderate classification. On December 19, 2016, EPA reclassified the Sheboygan nonattainment area for the 2008 ozone NAAQS as

Moderate with an attainment date of July 20, 2018 (81 FR 91841). On November 14, 2018, EPA proposed to grant Wisconsin's request for a one-year attainment date extension, and establish a new Moderate attainment date of July 20, 2019 for the Sheboygan nonattainment area for the 2008 ozone NAAQS (83 FR 56781).

On June 27, 2013, the Wisconsin Department of Natural Resources (WDNR) submitted a request for EPA to reconsider the boundary of the Sheboygan nonattainment area for the 1997 ozone NAAQS and 2008 ozone NAAQS, and reduce the area to a smaller size.

On February 15, 2019, EPA proposed to take two related actions regarding the Sheboygan nonattainment area for the 1997 ozone NAAQS and 2008 ozone NAAQS (84 FR 4422).

First, under the authority of Clean Air Act (CAA) section 107(d)(3)(D), EPA proposed to split the original Sheboygan nonattainment area for the 1997 ozone NAAQS and 2008 ozone NAAQS into two separate nonattainment areas that together cover the identical geographic area of the original nonattainment area. EPA proposed that the air quality data, emissions and emissions-related data, meteorology, geography/topography, jurisdictional boundaries, and other air quality related considerations, as well as planning and control considerations, support the State's request to reconsider the Sheboygan nonattainment area boundary.

Second, pursuant to regulations at 40 CFR 51.1118, EPA proposed to make a clean data determination for one of the proposed separate areas for the 2008 ozone NAAQS. This determination was based upon three years of complete, quality-assured and certified data for the 2015-2017 monitoring period. The three-year ozone design value for 2015-2017 was 0.070 ppm, which meets the 2008 ozone NAAQS.

II. What Comments did EPA Receive?

During the comment period, EPA received six comments, all of which were supportive. Therefore, EPA is finalizing this rule as proposed.

III. What Actions is EPA Taking?

Under the authority of CAA section 107(d)(3)(D), EPA is splitting the current Sheboygan nonattainment area for the 1997 ozone NAAQS and the 2008 ozone NAAQS into two distinct nonattainment areas that together cover the identical geographic area of the original area. One of the separate areas, called the "Shoreline Sheboygan County, WI" nonattainment area, consists of the eastern portion of the original area, including the Sheboygan Kohler Andrae monitor. The other separate area, called the "Inland Sheboygan County, WI" nonattainment area, consists of the western portion of the original area, including the Sheboygan Haven monitor. The areas are split along the following roadways, going from the northern county boundary to

the southern county boundary: Highway 43, Wilson Lima Road, Minderhaud Road, County Road KK/Town Line Road, N 10th Street, County Road A S/Center Avenue, Gibbons Road, Hoftiezer Road, Highway 32, Palmer Road/Smies Road/Palmer Road, Amsterdam Road/County Road RR, Termaat Road. EPA's nonattainment boundary for the Shoreline Sheboygan area for the 1997 ozone NAAQS and 2008 ozone NAAQS is a portion of Sheboygan County inclusive and east of the split boundary. EPA's nonattainment boundary for the Inland Sheboygan County area for the 1997 ozone NAAQS and 2008 ozone NAAQS is a portion of Sheboygan County exclusive and west of the split boundary. Both areas continue to be designated nonattainment for the 1997 ozone NAAQS and 2008 ozone NAAQS and classified as Moderate.

Pursuant to regulations at 40 CFR 51.1118, EPA is making a clean data determination for the Inland Sheboygan County area for the 2008 ozone NAAQS. EPA's determination is based on data from the Sheboygan Haven monitor with site ID 55-117-0009, which is the only Federal Reference Method ozone monitor within the Inland Sheboygan County area. EPA proposed to make this clean data determination based on data for the 2015-2017 monitoring period; however, EPA is finalizing this action based on three years of complete, quality-assured and certified data for the more recent 2016-2018 monitoring period. The three-year ozone design value for 2016-2018 was 0.071 ppm, which meets the 2008

ozone NAAQS. Therefore, EPA is determining that the Inland Sheboygan County area is attaining the 2008 ozone NAAQS. For as long as the area continues to attain the 2008 ozone NAAQS, EPA is suspending the requirements for WDNR to submit attainment demonstrations, and associated reasonably available control measures, reasonable further progress plans, contingency measures, and any other planning requirements related to attainment of the 2008 ozone NAAQS for the Inland Sheboygan County area. This action does not constitute a redesignation of the area to attainment of the 2008 ozone NAAQS under section 107(d)(3)(E) of the CAA, nor does it constitute approval of a maintenance plan for the area as required under section 175A of the CAA, nor does it find that the area has met all other requirements for redesignation. The Inland Sheboygan County area will remain designated nonattainment for the 2008 ozone NAAQS until such time as EPA determines that the area meets CAA requirements for redesignation to attainment and takes a separate action to redesignate the area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of this revised designation, which imposes no new regulatory requirements, and this clean data determination, which relieves the Inland Sheboygan County area

from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Further, this rule relieves the State of certain planning requirements for the Inland Sheboygan County area. For these reasons, these actions will become effective on the date of publication of these actions.

IV. Statutory and Executive Order Reviews.

This rulemaking action revises the boundary of an existing nonattainment area by splitting it into two separate nonattainment areas that together cover the identical geographic area of the original nonattainment area, and makes a determination of attainment of the 2008 ozone NAAQS based on air

quality data for one of those areas. These actions do not impose additional requirements.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" subject to review by the Office of Management and Budget.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

D. Regulatory Flexibility Act (RFA)

This action is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibilities Act (5 U.S.C. 601 *et seq.*)

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have a substantial direct effect on one or more Indian tribes, since areas of Indian country are not being designated as part of this action. Furthermore, these regulation revisions do not affect the relationship or distribution of power and responsibilities between the Federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the Federal government and tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or

safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations and/or indigenous populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

L. Congressional Review Act (CRA)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act

of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

M. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Nitrogen dioxide, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National
parks, Wilderness areas

Dated: June 24, 2019.

Cheryl Newton,
Deputy Regional Administrator, Region 5.

Title 40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2585 is amended by revising paragraph (y) and adding paragraph (ii) to read as follows:

§ 52.2585 Control strategy: Ozone.

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(y) *Determination of attainment.* EPA has determined, as of March 1, 2011 that the Milwaukee-Racine, WI and Sheboygan, WI areas have attained the 1997 8-hour ozone standard. These determinations suspend the requirements for these areas to submit attainment demonstrations and associated reasonably available control measures (RACM), reasonable further progress plans (RFP), contingency measures, and other State Implementation Plan (SIP) revisions related to attainment of the standard for as long as the areas continue to attain the 1997 8-hour ozone standard. These determinations also stay the requirement for EPA to promulgate attainment demonstration and RFP Federal Implementation Plans (FIPs) for these areas. On **[insert date of publication in the Federal Register]**, EPA revised the designation for the Sheboygan, WI area for the 1997 8-hour ozone standard, by splitting the original area into two

distinct nonattainment areas, called the Inland Sheboygan County, WI area and Shoreline Sheboygan County, WI area, that together cover the identical geographic area of the original nonattainment area. EPA's March 1, 2011 determination of attainment for the Sheboygan County, WI area applies to the Inland Sheboygan County, WI area and Shoreline Sheboygan County, WI area.

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(ii) *Determination of attainment.* EPA has determined, as of **[insert date of publication in the Federal Register]**, that the Inland Sheboygan County, WI area has attained the 2008 8-hour ozone standard. This determination suspends the requirements for this area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress plan (RFP), contingency measures, and other State Implementation Plan (SIP) revisions related to attainment of the standard for as long as the area continues to attain the 2008 8-hour ozone standard.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

4. Section 81.350 is amended by:

a. Removing the entry for "Sheboygan, WI" in the table entitled

"Wisconsin - 1997 8-Hour Ozone NAAQS (Primary and Secondary)" and adding entries for "Inland Sheboygan County, WI" and "Shoreline Sheboygan County, WI" before the subheading "Rest of State"; and

b. Removing the entry for "Sheboygan County, WI: Sheboygan County" in the table entitled "Wisconsin - 2008 8-Hour Ozone NAAQS (Primary and secondary)" and adding entries for "Inland Sheboygan County, WI" and "Shoreline Sheboygan County, WI" before the entry for "Adams County".

The additions read as follows:

§ 81.350 Wisconsin.

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Wisconsin - 1997 8-Hour Ozone NAAQS (Primary and Secondary)

Designated area	Designation ^a		Category/classification	
	Date ¹	Type	Date ¹	Type
* * * * *	* *			
Inland Sheboygan County, WI	[insert date of publication in the Federal Register]	Nonattainment		Subpart 2/Moderate
Sheboygan County (part)				
Exclusive and west of the following roadways going from the northern county boundary to the southern county boundary: Highway 43, Wilson Lima Road, Minderhaud Road, County Road KK/Town Line Road, N 10th Street, County Road A S/Center Avenue, Gibbons Road, Hoftiezer Road, Highway 32, Palmer Road/Smies Road/Palmer Road,				

Amsterdam Road/County Road RR, Termaat Road.				
Shoreline Sheboygan County, WI	[insert date of publication in the Federal Register]	Nonattainment		Subpart 2/Moderate
Sheboygan County (part)				
Inclusive and east of the following roadways going from the northern county boundary to the southern county boundary: Highway 43, Wilson Lima Road, Minderhaud Road, County Road KK/Town Line Road, N 10th Street, County Road A S/Center Avenue, Gibbons Road, Hoftiezer Road, Highway 32, Palmer Road/Smies Road/Palmer Road, Amsterdam Road/County Road RR, Termaat Road.				
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^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is June 15, 2004, unless otherwise noted.

Wisconsin - 2008 8-Hour Ozone NAAQS (Primary and secondary)

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * * * *				
Inland Sheboygan County, WI ²	[insert date of publication in the Federal Register]	Nonattainment	12/19/2016	Moderate
Sheboygan County (part)				
Exclusive and west of the following roadways going from the northern county boundary to the southern county boundary: Highway 43, Wilson Lima Road, Minderhaud Road, County Road KK/Town Line Road, N 10th Street, County Road A S/Center Avenue, Gibbons Road, Hoftiezer Road,				

Highway 32, Palmer Road/Smies Road/Palmer Road, Amsterdam Road/County Road RR, Termaat Road.				
Shoreline Sheboygan County, WI ²	[insert date of publication in the Federal Register]	Nonattainment	12/19/2016	Moderate
Sheboygan County (part)				
Inclusive and east of the following roadways going from the northern county boundary to the southern county boundary: Highway 43, Wilson Lima Road, Minderhaud Road, County Road KK/Town Line Road, N 10th Street, County Road A S/Center Avenue, Gibbons Road, Hoftiezer Road, Highway 32, Palmer Road/Smies Road/Palmer Road, Amsterdam Road/County Road RR, Termaat Road.				
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¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

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[FR Doc. 2019-14990 Filed: 7/12/2019 8:45 am; Publication Date: 7/15/2019]